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ADDRESS OFFICIAL COMMUNICATIONS TO:
American Embassy,
Tokyo,
September 4, 1952.
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Dear Vernon:

Thank you for your very informative and helpful letter to Jules Bassin concerning the FCN "professions clause". He brought the problem to my attention as well as Waring, Adams and other interested officers of the Embassy. All of us are deeply concerned over the developments you describe, and hope the Department will continue in its effort to preserve the "clause". The Embassy will, of course, take any action indicated in the matter to implement the Department's position.

Robert G. Storey, the next president of the American Bar Association, was in Japan for about two weeks visiting and conferring with members of the American and Japanese legal professions. He left on September 2nd. Officers of the Embassy took advantage of this opportunity to present the problem to him. They indicated the serious consequences that could result in Japan to the detriment of the American lawyers and the American business community, if the proposed reservation was approved. He was very much interested in what he heard but apparently was not well informed on the details. He thought our points were not well known and desired more facts.

It was pointed out to Mr. Storey that our problem was related to the ABA resolution, adopted on February 26, 1952, recommending a constitutional amendment along the lines proposed by Senator Bricker. He replied, quite frankly, that

although

Vernon G. Setser, Esquire,
Chief,
Economic Treaties Branch
Commercial Policy Staff,
Department of State,
Washington, D. C.

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although the February 26 resolution represents the official stand of the ABA, there is a split in the Association on the subject, implying that if a good case could be made in favor of the "professions clause", the ABA might reconsider its stand, at least with respect to its opposition to the "clause". He felt that there was less danger to the American legal profession from Japanese attorneys than from other foreign lawyers, and intimated that a reservation to the Israeli Treaty would not necessarily imply a similar limitation to the Japanese Treaty. However, he was advised that once the precedent is established in the Senate with respect to the Israeli Treaty, it will set the pattern for similar action when the Japanese Treaty comes before it.

It is difficult to state whether any favorable impression was made. Mr. Storey seemed most sympathetic to the problem and promised that he would look into it upon his return to the United States. In the meantime, we have been asked by some American members of the local community if the Embassy could make available a transcript of the hearings on the Israeli FCN Treaty. Since we do not have the transcript, would you be kind enough to send us several copies. They will be useful.

Accept cordial regards.

Yours sincerely,

Robert Murphy
Robert Murphy

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C O P Y

September 16, 1952

Mr. Robert G. Storey
Republic Bank Building
Dallas 1, Texas

Dear Mr. Storey:

The American Chamber of Commerce in Japan, by unanimous vote, has instructed me to call to your attention a most serious problem directly affecting the 34 American lawyers admitted to practice in Japan, and indirectly, the entire American business community in this country. It is probable that the situation, if permitted to go unchecked, will eventually prevent these American attorneys from practicing in Japan, and thus deny the local American business community access to vitally needed American legal services. Therefore, I wish to take this opportunity to outline the matter for your reference so that you may take those steps you deem appropriate to avoid what I believe could become a most unfortunate circumstance.

Provisions of a Treaty of Friendship, Commerce and Navigation presently under discussion between representatives of the United States and Japan, have been described as a standard draft treaty. Such being the case it may be assumed that the treaty under consideration with Japan would be similar to other treaties on the subject and therefore provide generally that nationals of either Government would receive national or most-favored-nation treatment with respect to the practice of professions, including law, accounting, engineering, medicine and the like. This provision is designed to permit American lawyers to practice in Japan and Japanese lawyers to practice in the United States regardless of alienage, provided other qualifications are met. In Japan today, American lawyers can be admitted to practice, without written examinations, on approval by the Supreme Court of Japan.

We have recently learned that in connection with the Israeli FCN Treaty, now before the United States Senate for action, Senator Hickenlooper proposed a blanket reservation of far reaching effect, which would negate the FCN "professions clause". As you know, the American Bar Association has also opposed the "professions clause" and has recommended to Congress an amendment to the Constitution which would confine Congress in legislating under treaties to those powers which it has in the absence of a treaty. If the Senate approves the reservation to the Israeli Treaty with respect to the "professions clause", the precedent established will set the pattern for Senate action when the Japanese FCN Treaty comes before it.

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National treatment as to professional activities is not new in FCN Treaties, having been included in a number of treaties made since 1923. So far as we have been able to determine, the treaty rule on professions has never, since the time it first appeared in a treaty, actually caused any difficulty in the United States. Since it is not probable that any significant number of Japanese would or could take advantage of the "professions clause", the issue seems academic rather than real, insofar as State control over admission to the professions in the United States is concerned.

The net effect of the proposed reservation would be to deny not only lawyers, but doctors, accountants, engineers, and other professional men the privilege of practicing abroad, to the detriment of the foreign American community, particularly the business man, who would be unable to obtain the professional services he needs most to protect his person, property, investments, or other interests.

We question whether the American legal profession in the United States is in danger from foreigners; but whatever the reason for the reservation, it would seem unwise with respect to Japan. The Japanese would not understand it. They would believe that the denial of national treatment with respect to the practice of professions was evidence of a reversion to discriminatory treatment. If the Japanese were not permitted to practice their professions in the United States solely because of their nationality, they would eventually, and understandably, refuse to permit American lawyers to practice in Japan. The field would then be open to those non-Japanese nationals, principally British, whose governments would permit Japanese to practice in their courts.

In consequence, we trust that you will do whatever you think proper to influence the American Bar Association to reconsider its position with respect to its stand on the "professions clause".

Sincerely yours,

THE AMERICAN CHAMBER OF COMMERCE
IN JAPAN

Sterling W. Fisher
President